UNITED
NATIONS

CCPR

International Covenant
on Civil and
Political Rights

Distr.
GENERAL

CCPR/C/79/Add.122
4 May 2000

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Sixty-ninth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Comments by the Republic of Korea on the concluding observations
of the Human Rights Committee

Section D, paragraph 7

1. The final sentence of paragraph 7 reads:

"The Committee is concerned that article 6 of the Constitution, according to which international treaties ratified by the State party have the same effect as domestic law, has been interpreted as implying that legislation enacted after accession to the Covenant has status superior to that of Covenant rights."

The Government of the Republic of Korea would like to point out that article 6 of the Constitution has never been interpreted in this way. Furthermore, Korea has never enacted municipal law that has been in contradiction to a ratified international treaty. Likewise, Korea will be committed to its fulfilment of all applicable international agreements in the future.

Section D, paragraph 15

2. Paragraph 15 states, in part:

"The 'law-abidance oath' imposed on some prisoners, as a condition for their release, should be abolished."

This statement is factually incorrect, because the law-abidance oath is not a condition for the release of prisoners. During the Committee's review on 22 October 1999, it was clearly noted to the Committee that the oath is not a prerequisite for release, but is to be used as a reference. In the special amnesty of 15 August 1999, for example, 49 National Security Law offenders were released, even though they refused to sign the oath.

Section D, paragraph 16

3. The Committee requested that the Government provide full details on the system and actual practice of judicial appointments. The Government wishes to submit information on the judicial appointment system as follows:

(Term of office, appointment and age limit of judges)

4. Article 104 of the Constitution stipulates:

1. The Chief Justice of the Supreme Court shall be appointed by the President with the consent of the National Assembly.

2. The Supreme Court Justices shall be appointed by the President on the recommendation of the Chief Justice and with the consent of the National Assembly.

3. Judges other than the Chief Justice and the Supreme Court Justices shall be appointed by the Chief Justice with the consent of the Conference of Supreme Court Justices.

5. Article 105 of the Constitution stipulates:

1. The term of office of the Chief Justice shall be six years and he shall not be reappointed.

2. The term of office of the Supreme Court Justices shall be six years and they may be reappointed as prescribed by the Act.

3. The term of office of judges other than the Chief Justice and the Supreme Court Justices shall be 10 years, and they may be reappointed in accordance with the provisions of law.

4. The retirement age of judges shall be determined by law.

6. Article 45 of the Court Organization Act stipulates:

1. The Chief Justice of the Supreme Court shall be appointed for a six-year term of office, and shall not be reappointed.

2. The Supreme Court Justices shall be appointed for a six-year term of office, and the term may be renewed.

3. Judges other than the Chief Justice and the Supreme Court Justices shall be appointed for a 10-year term of office, and the term may be renewed.

4. The age limit for the Chief Justice of the Supreme Court shall be 70 years of age, the Supreme Court Justices, 65 years of age, and other judges, 63 years of age.

(Judicial reappointment system)

7. The reappointment of a judge is determined by reviewing whether the judge is still qualified to perform his or her duties. In reviewing their reappointments, all relevant elements are taken into consideration, including their job competence, ability, personality and health. The judicial personnel committee is also consulted in this regard.

8. The judicial reappointment system does not affect the independence of judges since the purpose of the system is to review the qualifications of judges, not to infringe judicial independence.

9. Since 1990 there have been three instances where judges failed to be reappointed.

Section D, paragraph 17

10. The first sentence of paragraph 17 reads:

"The extensive use of wiretapping raises serious questions of compliance by the State party with article 17 of the Covenant."

The term "extensive" is not acceptable as it is unqualified and is not based on established facts. It may be reiterated that Korean law expressly prohibits the use of wiretapping unless warranted by a court, with rare exceptions made only when circumstances prevent law enforcement officials from obtaining the necessary warrant in due time. In these latter cases, Korean law requires law enforcement agents to acquire a warrant within 48 hours of the implementation of any such action.

Section D, paragraph 18

11. The third sentence of paragraph 18 reads:

"The absolute restrictions on the right to hold assemblies on main roads imposed by the State party do not meet these standards."

12. The Government would point out that the phrase "the absolute restrictions" is not factual. Pursuant to article 12 of the Assembly and Demonstration Act, the head of the relevant police authority may prohibit assemblies or demonstrations on some main roads, if it is deemed necessary for the smooth flow of traffic. The intent of this legislation is to accommodate the

conflicting interests of public order and the right to assemble. In practice, however, most of the applications for assemblies or demonstrations on main roads are granted, on the condition that traffic flow and order are maintained.

Section D, paragraph 19

13. The second sentence of paragraph 19 reads:

> "Nevertheless, the Committee is concerned that the remaining restrictions on the right to freedom of association of teachers and other public servants do not meet the requirements of article 22, paragraph 2, of the Covenant."
>
> Concerning the right to freedom of association by teachers, the Government would refer to the discussion between the State party and the Committee, in which the Korean delegation made it clear that the freedom of association for teachers is indeed permitted, as evidenced by the enactment of the Act on the Establishment and Management of the Teachers' Union on 1 July 1999.

14. With regard to the right to freedom of association for public servants, the Government is pleased to inform the Committee that the Act on the Establishment and Management of the Public Servants' Work-place Association was enacted in February 1998. Furthermore, as of 31 December 1999, 76 work-place associations were established. The Government will consider taking further gradual measures to guarantee the freedom of association of public servants. It should be noted that Korea still maintains its reservations on article 22 of the Covenant.

---